

Assembly Bill No. 1635

CHAPTER 605

An act to amend Sections 18521, 19347, and 19384 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 5, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1635, Committee on Revenue and Taxation. Franchise and income taxes: deficiencies: actions: returns.

Existing laws pertaining to the administration of franchise and income taxes provide that the Franchise Tax Board may abate the assessment of interest in certain cases, and the taxpayer may, within 180 days after the board's notice not to abate interest, appeal the board's determination to the State Board of Equalization. Those laws also specify the requirements for bringing an action with respect to that interest.

This bill would specify that a taxpayer may bring an action after, among other things, a determination by the State Board of Equalization, including the issuance of a decision, opinion, or dismissal on a petition for rehearing, as provided.

Existing law pertaining to the administration of the Personal Income Tax Law requires, except as provided, an individual to use the same filing status that he or she used on his or her federal income tax return.

This bill would provide that the Franchise Tax Board may revise the return to reflect a correct filing status. This bill would also clarify the requirements to filing a joint nonresident return and filing status of an individual who is not required to file a federal income tax return, as provided.

The people of the State of California do enact as follows:

SECTION 1. Section 18521 of the Revenue and Taxation Code is amended to read:

18521. (a) (1) Except as otherwise provided in this section, an individual shall use the same filing status that he or she used on his or her federal income tax return filed for the same taxable year.

(2) If the Franchise Tax Board determines that the filing status used on the taxpayer's federal income tax return was incorrect, the Franchise Tax Board may, under Section 19033 (relating to deficiency assessments), revise the return to reflect a correct filing status.

(3) If either spouse was a nonresident for any portion of the taxable year, a husband and wife who file a joint federal income tax return shall be required to file a joint nonresident return.

(b) In the case of an individual who is not required to file a federal income tax return for the taxable year, that individual may use any filing status on the return required under this part that he or she would be eligible to use on a federal income tax return for the same taxable year if a federal income tax return was required.

(c) Notwithstanding subdivision (a), a husband and wife may file separate returns under this part if either spouse was either of the following during the taxable year:

(1) An active member of the armed forces or any auxiliary branch thereof.

(2) A nonresident for the entire taxable year who had no income from a California source.

(d) Except for taxpayers described in subdivision (c), for any taxable year with respect to which a joint return has been filed, a separate return shall not be made by either spouse after the period for either to file a separate return has expired.

(e) No joint return shall be made if the husband and wife have different taxable years; except that if their taxable years begin on the same day and end on different days because of the death of either or both, then a joint return may be made with respect to the taxable year of each. The above exception shall not apply if the surviving spouse remarries before the close of his or her taxable year, or if the taxable year of either spouse is a fractional part of a year under Section 443(a) of the Internal Revenue Code.

(f) In the case of the death of one spouse or both spouses the joint return with respect to the decedent may be made only by the decedent's executor or administrator; except that, in the case of the death of one spouse, the joint return may be made by the surviving spouse with respect to both that spouse and the decedent if no return for the taxable year has been made by the decedent, no executor or administrator has been appointed, and no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse. If an executor or administrator of the decedent is appointed after the making of the joint return by the surviving spouse, the executor or administrator may disaffirm the joint return by making, within one year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his or her separate return.

SEC. 2. Section 19347 of the Revenue and Taxation Code is amended to read:

19347. Within 90 days after the mailing of the notice of the Franchise Tax Board's action disallowing interest upon any refund



claim, or, in the case of an appeal to the board from the disallowance of interest on any refund claim, within the 90 days after the board's determination (including the issuance of a decision, opinion, or dismissal) of the appeal becomes final pursuant to Section 19346, the taxpayer may bring an action against the Franchise Tax Board on the grounds set forth for interest in the claim for the recovery of the interest.

SEC. 3. Section 19384 of the Revenue and Taxation Code is amended to read:

19384. The action provided by Section 19382 shall be filed within four years from the last date prescribed for filing the return or within one year from the date the tax was paid, or within 90 days after (a) notice of action by the Franchise Tax Board upon any claim for refund, or (b) the determination (including the issuance of a decision, opinion, or dismissal) by the State Board of Equalization on an appeal from the action of the Franchise Tax Board on a claim for refund becomes final pursuant to Section 19334, whichever period expires the later.

SEC. 4. The amendments made by Sections 2 and 3 of this act shall be operative for any determination made by the State Board of Equalization that becomes final pursuant to Section 19334 and 19346 of the Revenue and Taxation Code on or after January 1, 2000.

